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The Problem of *Uṣūl al-Shāshī*

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Introduction

The religious discipline of *uṣūl al-fiqh* as an independent literary genre began to emerge in the middle of the fourth/eleventh century. Although the biographical sources attribute works with the title *uṣūl al-fiqh* to earlier personalities, at the present we do not have any independent *uṣūl* work before this time. The famous *al-Risālah* by Shāfi'ī (d. 204/820), who has generally been credited to be the founder of this discipline, fundamentally differs in terms of its content and nature from the *uṣūl* works that we see from the middle of the fourth/eleventh century onwards. W. Hallaq has argued that the central concern of this work is *Ḥadīth*, though it contains the skeleton of the science of *uṣūl al-fiqh*. The fundamental difference between *al-Risālah* and later *uṣūl* treatises is the former is devoid of some of the philosophical questions which were to become an integral part of this genre later. The date of *al-Risālah* has been disputed recently; even if we attribute it to the historical figure of Shāfi'ī, there remains a gap of nearly one century and a half between *al-Risālah* and the earliest *uṣūl* texts which, as Hallaq has argued, cannot be explained away.[1]

The claim that Shāfi'ī's main aim in *al-Risālah* was to establish the authority of traditions from the Prophet (peace be on him) is backed by the works of a contemporary of his, Abū Mūsā 'Īsā b. Abān (d. 221/836), a Ḥanafī scholar and judge, and a disciple of Muḥammad ibn al-Ḥasan al-Shaybānī (d. 189/805). The latter's interests indicate that, at the end of the second century of the *Hijrah*, the theoretical debate among Muslim jurists revolved around traditions from the Prophet (peace be on him), whereas there was less interest in other aspects of Islamic legal theory.[2] 'Īsā's works and other works of a

[1] For a detailed investigation of the difference between *al-Risālah* and later works, see Wael B. Hallaq, "Was Shāfi'ī Master Architect of Islamic Jurisprudence?" in *International Journal of Middle Eastern Studies*, 25 (1993): 587–605.

[2] See Murteza Bedir, "An Early Response to Shāfi'ī: 'Īsā b. Abān on the Prophetic Report (*Khabar*)" in *Islamic Law and Society*, 9, 3 (2002), 285–311.

similar nature, i.e. monographs on individual *uṣūl* themes, were generally replaced by more developed and formally structured *uṣūl* texts. The mediaeval Muslim worldview places the Traditions in a central position, in so far as the later achievements were regarded, which are seen not as an innovation, but as an expansion or interpretation of the earlier ideas in the tradition. It was natural, therefore, that these incomplete, less developed and less consistent monographs should give way to more mature works. Even the earliest Sunnī *uṣūl* text we have in our hand today, *al-Fuṣūl fī 'l-Uṣūl* by Abū Bakr al-Jaṣṣāṣ (d. 370/981), has reached us in a single manuscript, which is also incomplete. The centrality of the Tradition made it necessary either to interpret away the earlier works in the same school traditions or to ignore it as much as one can. Only those works that had a fully developed structure as well as those that reflected the main tenets of the orthodoxy managed to survive. In the Ḥanafī tradition, Jaṣṣāṣ's legacy seems to have lived through the Transoxanian school of *uṣūl*, despite the fact that it was closer to the beginning of the school's foundation tradition and reached a stage of development one would expect from a standard early *uṣūl* text. This lack of interest exists despite the fact that his work contains much more material than its subsequent reproductions, say, *Taqwīm al-Adillah* by Abū Zayd al-Dabūsī (d. 430/1038).

As to the period before the time of Jaṣṣāṣ, the texts containing in their titles the word *uṣūl*, which were attributed to such earlier authorities as al-Shaybānī, and Abū Yūsuf (182/798), do not belong to the genre of *uṣūl al-fiqh* in the technical sense of this phrase. They are most probably pure *furūʿ* writings. The so-called *Uṣūl al-Karkhī* of Abū 'l-Ḥasan al-Karkhī (d. 340/951) is also far from being characterised as an *uṣūl* text proper. Perhaps the most serious of these attributions is the so-called *Uṣūl al-Shāshī*. Two modern studies refer it as the one of the earliest representative works of the classical literature of *uṣūl al-fiqh*,[3] maintaining that *Uṣūl al-Shāshī* was a work of early fourth century of *Hijrah*. However, a certain comparative examination of the content, language and structure of the work with early *uṣūl* texts indicate that the text of *Uṣūl al-Shāshī* could not be earlier than Pazdawī's *al-Uṣūl* (late fifth/eleventh century), as it often clearly follows the terminology and the structure of Pazdawī's and even supplements it. The following study will present my arguments of why this work cannot go before Pazdawī's time, let alone be a fourth-century text. The study consists of two parts. First, an investigate of the history of this text through the classical and modern biographical dictionaries. Second, a comparative analysis of some of its contents in comparison with a few early *uṣūl* texts.

[3] See Norman Calder, "Uṣūl al-Fiḳh", *EI²*, vol. X, 931; Wael B. Hallaq, *History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1998), 36, n. 1.

I

HISTORICAL AND BIOGRAPHICAL EVIDENCE

A well-known *uṣūl* compendium, popular especially in South Asian *madrasahs*, is entitled *Uṣūl al-Shāshī*. It has been recently published twice under the names of two different fourth century Ḥanafī jurists, one being Abū 'Alī Aḥmad b. Muḥammad al-Shāshī (d. 344/955), a disciple of the famous Abū 'l-Ḥasan al-Karkhī and the other, Abū Ya'qūb Isḥāq b. Ibrāhīm al-Shāshī (d. 325/936). The more older editions of this compendium published in South Asia, either do not provide any clue about its author, or sometimes name a certain Niẓām al-Dīn al-Shāshī or sometimes Abū Ya'qūb al-Shāshī as the author.[4] Brockelmann, under the title of Abū Ya'qūb al-Shāshī, notes that there is an *uṣūl* manuscript ascribed to him in the libraries of Egypt, Petersburg and Rampur. Before Brockelmann, Goldziher had expressed doubt about the date of death of this Shāshī, assuming that the ascription of this work to him might be correct. This was assumed on the basis of the fact that the text of *Uṣūl al-Shāshī* contains a reference to a fifth century Shāfi'ī jurist Ibn al-Ṣabbāgh (d. 477/1084). The work also contains two quotations from Abū Zayd al-Dabūsī, whose work of *uṣūl* also forms part of this study.[5] Brockelmann, however, shifts the doubt from the author to the text, thereby arguing that this text should belong to someone else. He proposed two alternative names to which, in his view, this compendium belongs; the first jurist is Badr al-Dīn al-Shāshī al-Shirwānī who was active around 752/1351 or 852/1448, in whose name is the text is registered in the Peshawar *Fihrist*. The other name, which is probably correct, is Niẓām al-Dīn al-Shāshī (a 7th/13th century scholar), whose name is found in the Bankipore catalogue.[6]

It seems that the confusion was present at the time of the 19th century Indian biographer 'Abd al-Ḥayy al-Luknawī (1304/1886), who, by reference to *Kashf al-Ẓunūn* of Ḥājjī Khalīfah (d. 1067/1659), tried to clarify the situation, stating that the compendium called *Uṣūl al-Shāshī* belonged to a certain Niẓām al-Dīn al-Shāshī, which is also titled *al-Khamsīn*, this being a reference to the

[4] Under the name of Abū Ya'qūb this work is published in Delhi (1260–64) and Allāh Ābād (1289) and Peshawar (1278 and 1293) Carl Brockelmann, *Geschichte der arabischen Literatur* (*GAL*) 2 vols. (Leiden: E. J. Brill, 1943–49; 3 supplements. Leiden: E. J. Brill, 1937–1942), *Supp.*, I, 294.

[5] *Taqwīm al-Adillah*; for it see below note 15.

[6] *GAL, Supp.*, I, 294.

age of the author (50) at the time of its completion.[7] The confusion in his time, however, seems not to be around whether it is an early text. The Istanbul edition of *Kashf al-Ẓunūn* does not contain anything about *Uṣūl al-Shāshī*, but the first edition by Fluegel contains this note;[8] however, it does not belong to Ḥājjī Khalīfah, as Fluegel brackets those annotations inserted not by the author himself but by the copiers. The beginning on this text, which was given by Ḥājjī Khalīfah matches the beginning of the text in our hand today. A commentary of this work is also noted there, which was written by a certain Mawlā Muḥammad b. al-Ḥasan al-Khwārizmī al-Fārābī, who completed this commentary in the year 781/1379.[9] The earliest record which attributes this *Uṣūl al-Shāshī* to Abū 'Alī al-Shāshī is found in the *Hadiyyat al-'Ārifīn* by Bağdatlı İsmail Paşa (d. 1339/1920).[10]

Muḥammad Maẓhar Baqā,[11] after analysing the sources and different publications of this work, concluded that there are two *uṣūl* works named *Uṣūl al-Shāshī*; the author of the first one is disputed, but it is most probably Niẓām al-Dīn al-Shāshī, for he is specified both in *Ḥadā'iq al-Ḥanafiyyah* and *Kashf al-Ẓunūn* as the author of this text. However, as M. A. Nadawī has recently pointed out, the author of *Ḥadā'iq*, Faqīr Muḥammad al-Jīlamī (d. 1322/1904), took this information from the Flüegel edition of *al-Kashf*,[12] but he overlooked the fact that the information that this al-Shāshī lived in 7th/13th century is not from Flüegel's *al-Kashf*. Al-Jīlamī then must have had a second source for this text.

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[7] Muḥammad 'Abd al-Ḥayy al-Laknawī, *Fawā'id al-Bahiyyah fi Tarājim al-Ḥanafiyyah* (Beirut: Dār al-Ma'rifah, 1975), 244–245.

[8] Gustavus Fluegel, *Lexicon Bibliographium et Encyclopedicum*, (*Kashf*) 7 vols., (Leipzig: Publications for the Oriental Translations Fund of Great Britain and Ireland,1835–1858), V: 81. It is possible that al-Luknawī used the Fluegel edition. As the Istanbul edition though being late does not contain this note, despite the fact that it is based on the author's autograph. The manuscript copies used by Fluegel, seems to have been edited by the copier. The information about this text given by the Fluegel edition most probably belongs to the copiers and annotaters rather than Ḥājjī Khalīfah himself, which explains why the editors of the Istanbul version did not incorporate it to the main text, given the fact that they were aware of the Fluegel edition.

[9] This is published together with the edition ascribed to Abū 'Alī Aḥmad b. Muḥammad al-Shāshī, *Uṣūl al-Shāshī* (Beirut: Dār al-Kitāb al-'Arabī, 1402/1982). According to the Flüegel edition of *Kashf*, the draft of this commentary was written in Egypt and it attained its final form in Kastamonu, then in Bursa (Turkey). See 5: 8.

[10] Bağdatlı İsmail Paşa, *Hadiyyat al-'Ārifīn*, ed. Kilisli Rıfat Bilge & İbnülemin Mahmud Kemal İnal, 2 vols. (İstanbul: Milli Eğitim Basımevi, 1951), 1: 62

[11] Muḥammad Maẓhar Baqā', *Mu'jam al-Uṣūliyyīn* (Makkah: Jāmi'at Umm al-Qurā, 1414/1993), 11–15.

[12] Niẓām al-Dīn al-Shāshī, *Uṣūl al-Shāshī*, ed., Muḥammad Akram al-Nadawī (Beirut: Dār al-Gharb al-Islāmī, 2000), 10.

The other *Uṣūl al-Shāshī* is attributed to Abū Ya'qūb al-Shāshī, which Baqā' thinks is different from the famous *Uṣūl al-Shāshī* implying that its ascription to Abū Ya'qūb of the early fourth century is authentic. My examination of different versions of *Uṣūl al-Shāshī*, including the one ascribed to Abū Ya'qūb, shows that all the works known as *Uṣūl al-Shāshī* are the same work. Baqā's confusion, though he does not specify the text he examined, might have stemmed from the fact that the popularity of this work in the Indian subcontinent led to a number of commentaries on, and manipulation of, this work.[13] Besides, if there were an *uṣūl* work of an earlier date such as 325/936 or 344/955, the traditional sources would not have failed to mention it. Besides, no classical biographers, who had entries for both Abū 'Alī and Abū Ya'qūb, ascribed them an *uṣūl* work.[14] As far as I know no major *uṣūl* text of later centuries contain any quotation from this supposedly fourth century text, or from these two jurists.

It seems that, apart from its popularity as a textbook, this work was seen as an ordinary *uṣūl* work of no particular importance, let alone the earliest *uṣūl* text. The fact that the name of the Abū Ya'qūb Isḥāq b. Ibrahīm al-Shāshī appears in a number of manuscripts of geographically different locations suggests a common source of confusion, at least for some copies of it. The emergence of the name of Abū 'Alī al-Shāshī, however, is totally baseless, as no manuscript appears to carry his name. His name appears in the most recent edition of the work, probably following Bağdatlı İsmail Paşa, whose source for this information is unknown. Although the editor of *Uṣūl al-Shāshī* was aware of the note in *al-Fawā'id* of al-Luknawī that this work belonged to Niẓām al-Dīn al-Shāshī, he misinterpreted the previous note there, which says that there were two famous scholars by the name of al-Shāshī, Qaffāl al-Shāshī al-Shāfi'ī (365/975) and Abū 'Alī al-Shāshī al-Ḥanafī, thinking that this Niẓām al-Dīn al-Shāshī was Abū 'Alī. Another factor that might have made him think that this work belonged to Abū 'Alī might be that this Abū 'Alī was a student of Abū 'l-Ḥasan al-Karkhī, like Jaṣṣāṣ, which might further be backed by the fact that the last issue treated in *Uṣūl al-Shāshī* is identical with that in *al-Fuṣūl* of Jaṣṣāṣ. Although no biographer, including al-Luknawī, records that Abū 'Alī's full

[13] See, for example, *Tashīl Uṣūl al-Shāshī* by Muḥammad b. Anwar al-Badakhshānī (Karachi: Idārat al-Qur'ān wa al-'Ulūm al-Islāmiyya, 1412).

[14] For Abū 'Alī al-Shāshī, see 'Abd al-Qādir al-Qurashī, Ibn Abī al-Wafā' Muḥammad b. Muḥammad, *al-Jawāhir al-Muḍiyyah fī Ṭabaqāt al-Ḥanafiyyah* (Haydarabad: Dā'irat al-Ma'ārif al-Niẓāmiyya, 1332), 1: 262; al-Luknawī, *Fawā'id*, 244; Abū Bakr Aḥmad b. 'Alī Khaṭīb al-Baghdādī, *Ta'rīkh Baghdād* (Cairo: Maktabat al-Khānjī, 1349/1931), 4: 392; Abī Isḥāq Ibrāhīm b. 'Alī Shīrāzī, *Ṭabaqāt al-Fuqahā'*, ed. Iḥsān 'Abbās (Beirut: Dār al-Rā'id al-'Arabī, 1970), 143. For Abū Ya'qūb al-Shāshī, see al-Qurashī, *Jawāhir*, 1: 136–137; al-Luknawī, *Fawā'id*, 43–44.

name includes Niẓām al-Dīn, the editor combined two different people's names into one and attributed it to this Abū 'Alī.

As a conclusion, given the above historical data, it is hard to accept that this work is the product of the early half of the fourth century of *Hijrah;* neither can it be prior to Abū Zayd's time (early fifth century). It seems that we have to rely on the note in the Flüegel edition of *Kashf*, as it appears to be the earliest biography mentioning this work.

II

COMPARATIVE ANALYSIS

In what follows, the literary style and structure of the *Uṣūl al-Shāshī* will be examined in comparison with the early four *uṣūl* texts that belong to the fourth and fifth centuries. Along with *al-Fuṣūl fi 'l-Uṣūl* of Abū Bakr Aḥmad b. 'Alī al-Jaṣṣāṣ al-Rāzī (d. 370/981),[15] the earliest of all, this study will analyse *Taqwīm al-Adillah*[16] by Abū Zayd 'Ubayd Allāh b. 'Umar al-Dabūsī (d. 430/1039); *Kitāb al-Uṣūl*[17] by Shams al-A'immah Abū Bakr Muḥammad b. Aḥmad al-Sarakhsī (483/1090); and *Kitāb al-Uṣūl*[18] by Fakhr al-Islām Abū 'l-Ḥasan 'Alī b. Muḥammad al-Pazdawī (482/1089).[19]

I chose four topics, one from each of the four major parts of *uṣul* texts, i.e. a topic from each of *Kitāb*, *sunnah*, *ijmā'* and *qiyās*. An overview of the texts under consideration shows that they have treated the themes of *uṣūl al-fiqh* in the order of *Kitāb*, *sunnah*, *ijmā'* and *qiyās*. This is also true for *Uṣūl al-Shāshī* as he, in the introduction, states that the foundations of the law (*uṣūl al-fiqh*) are four, implying that he is going to arrange the topics of the book according to these four sources:

The roots of law are four: *Kitāb Allah*, *Sunnat Rasūl Allah*, the consensus of

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[15] Abū Bakr Aḥmad b. 'Alī Al-Jaṣṣāṣ, al-Rāzī, *Al-Fuṣūl fi 'l-Uṣūl*, ed. 'Ujayl Jāsim al-Nashamī, 2nd edition, 4 vols. (Kuwait: Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah, wa al-Turāth al-Islāmī, 1414/1994) (hereinafter *al-Fuṣūl*).

[16] Abū Zayd 'Ubayd Allah b. 'Umar Al-Dabūsī, *Taqwīm al-Adillah*, f. 226a (Istanbul MS Laleli No: 690).

[17] Abū Bakr Muḥammad b. Aḥmad Al-Sarakhsī, *Kitāb al-Uṣūl*, ed. Abū al-Wafā' al-Afghānī, 2 vols. (Ḥaydarābād: Lajnat Iḥyā' al-Ma'ārif al-Nu'māniyyah, reprinted in Beirut, n.d.).

[18] Abū al-Ḥasan 'Alī b. Muḥammad, b. Ḥusayn Al-Pazdawī, *Kitāb al-Uṣūl*, published in the margins of *Kashf al-Asrār* by 'Abd al-'Azīz al-Bukhārī, 4 vols. (Istanbul: Maktab al-Ṣanā'i', 1307).

[19] For the detailed biographies of these jurists, see Murteza Bedir, "Early Development of Ḥanafī *Uṣūl al-Fiqh*" (Unpublished Ph.D Dissertation, the University of Manchester, UK, 1999).

Muslim nation (*ijmāʿ al-ummah*), and *qiyās*.[20]

Shāshī's work appears generally to follow the general structure of *Uṣūl* of Pazdawī, which is based on four-partite division. Unlike however the latter, the internal structure of these four general parts do not seem to be based on any logical classification. The similarity is more visible in the terminology, which is not only the same as that of Pazdawī's but also introduces a few innovations. As an example, though the opposition between the set of "*ẓāhir-naṣṣ-mufassar-muḥkam*" and the set of "*khafī-mushkil-mujmal-mutashābih*" was known, it was only in Shāshī that we find a term to designate this opposition: "the counterparts" (*al-mutaqabilat*).[21] Another term is "relations of the texts" (*mutaʿalliqāt al-nuṣūṣ*),[22] which includes four implications of a text, that is *ʿibārat al-naṣṣ-ishārat al-naṣṣ-dalālat al-naṣṣ-iqtiḍāʾ al-naṣṣ*. Thus I shall deal, under the *Kitāb* section, with a few issues of the topic of *amr* (command); under the *sunnah* section with an issue of *khabar al-wāḥid* (solitary reports); under the *ijmāʿ* section with the authoritativeness of *ijmāʿ*; and finally, under the *qiyās* section with the problem of *istiḥsān* (Islamic concept of equity).

The Concept of Command[23]

Definition of *Amr*

The topic of *amr* occupies a central place in early *uṣūl* literature to the extent that Sarakhsī commences his *uṣūl* work by declaring the following:

> The most important matter, to begin with, in explanation (*bayān*), is (the matters of) *amr* and *nahy*, for most of the *ibtilāʾ* (divine test of humans) is based on them, and only by knowing them is the knowledge of legal rulings (*aḥkām*) completed, and the permitted (*ḥalāl*) distinguished from the prohibited (*ḥarām*).[24]

The first issue dealt with under the heading of *amr* is its definition. One can recognise a radical change of attitude between these four early jurists and Shāshī concerning the definition of *amr*. While the former jurists define the concept of command as a verbal entity, i.e. the form of imperative, the latter distinguishes between its linguistic and legal definitions, a fact which indicates

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[20] *Uṣūl al-Shāshī*, 1.
[21] *Uṣūl al-Shāshī*, 68.
[22] *Uṣūl al-Shāshī*, 99.
[23] The topic of *amr* in Jaṣṣāṣ, *al-Fuṣūl*, 2: 79–146; in Dabūsī, *Taqwīm*, ff. 13–18; in Sarakhsī, *Uṣūl al-Sarakhsī*, 1: 11–25; in Pazdawī, *Uṣūl*, 1: 100–133; and in *Uṣūl al-Shāshī*, 116–131.
[24] Sarakhsī, *Uṣūl al-Sarakhsī*, 1: 11.

a much more mature stage of development. The definition of *amr* as *if'al* (imperative form) did not seem to have posed a problem prior to the time of Shāshī, who questions this formula, not on legal or linguistic grounds, but on theological-dogmatic grounds. The formula *amr=if'al* (command=imperative form) turns out to be problematic because, theologically speaking, it amounts to asserting that a "speech (*kalām*)" is what we utter through our mouth. The controversy surrounding the issue of *khalq al-Qur'ān* (createdness of the Qur'ān) gave rise to a great deal of theological thinking on God's attribute of speech, as the Qur'ān is considered *kalām Allāh* (God's speech). To define *amr* as something uttered is said to be equal to asserting that God's speech, i.e. the Qur'ān, is created, which is what the Mu'tazilah viewed, because of defining "speech" as letters and voice. The earliest reference recorded in the sources which links this controversy to the definition of *amr* is attributed to the great theologian Abū 'l-Ḥasan al-Ash'arī (324/935), who is said to have denied the formula "*amr* equals *if'al*". A fifth century jurist, a non-Ash'arī Shāfi'ī, Abū 'l-Muẓaffar al-Sam'ānī (d. 489/1096), notes that there was no such controversy among the "jurists" as to whether *amr* is an equivalent of *if'al* or not, until those Ash'arīs innovated this idea of internal speech (*ma'nan qā'im fi nafs al-mutakallim*).[25]

As regards Shāshī, the legal theory, especially the Ḥanafī one, was developed through two channels, one being the legal practice-oriented, represented by jurists other than Shāshī, and the other being the legal-theological-oriented one represented by the so-called Māturīdī *uṣūl* tradition. In Shāshī's text we see an attempt to reconcile these two strands. The *uṣūl* work of the sixth century theologian-jurist 'Alā' al-Dīn al-Samarqandī (d. 539/1145) seems to be one of the best representatives of the Māturīdī tradition. On the problem of the specificity of *amr* to *if'al*, he disagrees with the dominant Ḥanafī tradition, i.e. the line of Jaṣṣāṣ-Dabūsī, on the grounds that the form of imperative is not the command itself but its indication (*dalālah 'alayh*), the reason being that the command as part of speech is an internal entity existing with the speaker, not the words he utters.[26] Samarqandī and other Sunnī theologians, therefore, define command as non-verbal entity (*ṭalab, istid'ā'*) constituted by the imperative or other forms.

The fact that all our four previous jurists identify command with a linguistic form obviously leads to the implication that these jurists would be

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[25] Abū 'l-Muẓaffar Manṣūr b. Muḥammad al-Sam'ānī, *Qawāṭi' al-Adillah*, ed., M. H. Ismā'īl, 2 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1418/1997), 1: 49.

[26] 'Alā' al-Dīn Abū Bakr Muḥammad b. Aḥmad Samarqandī, *Mīzān al-Uṣūl fi Natā'ij al-'Uqūl*, ed., M. Zakī 'Abd al-Barr (Doha, Qatar: Iḥyā' al-Turāth al-Islāmī, 1404/1984), 83–84, 94–96.

labelled as Mu'tazilī.[27] That is why Shāshī tries to mediate between these two approaches by explaining away unwarranted implications involved in defining the command as imperative. Adopting this so-called Māturīdī line of thinking, Shāshī excuses in favour of these great early Ḥanafī jurists that their idea of restricting *amr* to the form of imperative was inspired by legal concerns. Thus, he, seems to imply that if they were to think of the above theological implication, they would certainly follow the same root. He seems to be justified by the fact that this problem of specificity, as he has pointed out, is asserted only to reject the obligatory nature of prophetic actions. However, not only did Sarakhsī and Pazdawī define command as a linguistic form but Jaṣṣāṣ and Dabūsī did so too, though they did not mention the prophetic actions in this context, a fact which makes Shāshī's interpretation untenable. There seem to be two possible explanations for their ignorance of this implication, each reinforcing the other. Firstly, all of them, and in particular Jaṣṣāṣ and Dabūsī, might have seen no harm in following the Mu'tazilī approach (if it is really a Mu'tazilī one, since it may well be one of earlier positions among the scholars). Jaṣṣāṣ even incorporated another Mu'tazilī item in his definition of command, namely the condition of intention (*irādah*). Sarakhsī and Pazdawī then might have simply followed the tradition they found in Jaṣṣāṣ and especially in Dabūsī, but this seems to be less likely, for they do not always follow Dabūsī, as on the question of *takhṣīṣ al-'illah*.[28] After all, the Ḥanafī school was still far from adopting the Māturīdī theological tradition at the time of these jurists.[29] Secondly, their perception of the science of *uṣūl al-fiqh* is excessively *furū'*-oriented; i.e., they see it as primarily a legal activity, a feature which constantly appears in their elaboration of theoretical principles. This aspect of their understanding of the science of *uṣūl al-fiqh* most probably inspired Ibn Khaldūn (732-84/1332-82) and others[30] to identify the method of jurists (*fuqahā'*) with the Ḥanafī method. Sarakhsī and Pazdawī lived at the time when the Māturīdī movement had not yet been the official position of the Ḥanafī school. It is, thus, possibly the late origin of *Uṣūl al-Shāshī* that made him take into account these two traditions, hence, the theological problems associated with the definition of the concept of command.

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[27] This Samarqandī criticises his fellow Ḥanafī jurists as being ignorant of the theoretical-theological implications of the ideas they were promoting, see Ibid., 1–3.

[28] See, Sarakhsī, *Uṣūl*, 2: 208–213; Pazdawī, *Uṣūl*, 4: 1133-1134.

[29] For the Māturīdiyyah, see, Wilfred Madelung, 'The Spread of Māturīdism and the Turks', in Wilfred Madelung, *Religious Schools and Sects in Medieval Islam* (London: Variorum Reprints, 1985); W. Montgommery Watt, *The Formative Period of Islamic Thought* (Edinburgh University Press, 1973).

[30] For a discussion of this issue, see Bedir, "Early Development", Ch I, pp. 12–18.

The Legal Consequence of *Amr* (*mūjab al-amr*)

The treatment, by the four above-mentioned jurists, of the legal implication of an imperative form usually follows the pattern of enumerating the different views [often four, namely *wujūb* or *ījāb* (obligation), *nadb* (recommendation), *ibāḥah* (permission) and *waqf* (abstention)], which is followed by the discussion of the for-and-against arguments of each of these positions. The issue of legal consequence of the imperative form gives us the opportunity to compare the structural development of these early texts. First, it is clear that Jaṣṣāṣ' *al-Fuṣūl* is a huge work containing all the material the subsequent jurists would use, but it is at the same time disorganised. His concern was clearly with finding all the necessary tools to discuss a certain issue; he did not seem to have time to concentrate on the structure. Thus, after listing the four views concerning the issue of legal consequence, he starts to defend the case for *ījāb*, the position of the Ḥanafī school. Dabūsī too starts with the list of the views, but he then gives each view an opportunity to defend itself. This is actually one of the reasons why his arguments in the above list appear to be less than those of Jaṣṣāṣ. That is, as noted above, by using Jaṣṣāṣ's material for the discussion of the issue, Dabūsī organised the chapter in a way which makes it possible to understand the rationale of the opponents more explicitly. This is, in fact, a polemical device aiming to support the prevalent view. Sarakhsī and Pazdawī then have adopted this technique. Shāshī's text again displays a different character, in that his concern does not seem to be discursive; rather, he tries to articulate the position of his school, which is, in this case, *ījāb*. We do not know, for example, what the anti-*ījāb* positions propose. Even the argumentative part does not give a clue about the opposing views and their arguments.

Secondly, one can also see structural development in the perception of the issue of legal consequence by these jurists. For Jaṣṣāṣ and Dabūsī the issue concerns only a single question: what does *if'al* entails in an unqualified situation? They thus identified four possible answers. Sarakhsī, though formally following them, hinted that *waqf* poses a different sort of question. Then Pazdawī pushed to the fore this implicit idea, found in Sarakhsī, regarding the issue of legal consequence as comprising of two questions, one being as to whether the form of imperative is a signified expression, while the other being as to what is this signification, if it is a signified one. For Shāshī's purpose, this problem must be too complicated, as his concern is neither with precision nor with detail, but with the articulation of the school's doctrine. This is obviously the pattern of the post-formative period.

Amr and *Takrār* (Repetition)

Related to the implication of the form of imperative is the issue of *takrār*, that is, whether an unqualified imperative entails a repetitive obligation or not. Apart from being a linguistic-theoretical issue, it involves the question of how to explain the universality of religio-legal obligations supposedly imposed by the divine imperatives. It is the latter aspect that is the concern of the later *uṣūl* works. As to the theoretical aspect, there is an ambiguity in the Ḥanafī school's position regarding the "true" doctrine of the school. According to Jaṣṣāṣ, though an imperative form entails a single obligation in normal circumstances, it is likely to entail a repetitive obligation. However, the rest of the three jurists flatly reject the idea that an imperative form would implicitly entail a repetitive obligation. The latter claim is predicated by the fact that there is an obvious contradiction between the idea of *takrār*, which involves some sort of generality, and the idea of a command, which is by definition associated with singularity.

In spite of their outright rejection of *takrār*, they however introduced a kind of *takrār* by admitting that any form of imperative includes a generic noun that explicitly denotes a single action, but is likely to mean the whole of a genus. Thus a generic noun, such as water, food, cloth, etc., can refer to two things, one being the minimum (a cup of water, a single piece of food and a single cloth), and the other the maximum (water, food and cloth in general). A case from the *corpus juris* of the school is instrumental in the explanation of the true doctrine of the school. The case is from the section on marriage dealing with the utterance of divorce phrases; a man says to his wife "repudiate yourself (*ṭalliqī nafsaki*)", an expression which gives rise to the question of how many *ṭalāq*s are delegated to the wife by this expression. According to Ḥanafī law, this gives rise to a single instance of the delegation of the right of divorce by the husband. There is also the possibility of three *ṭalāq*s (the maximum right of divorce possessed by a husband according to Islamic law), which can be realised if the husband confirms that he intended three at the time of utterance of this delegation. In other words, the *uṣūl* writers take the expression "repudiate yourself" as a command and interpret it as entailing a minimum and a maximum amount. The former is understood from the command itself, while the latter needs an extra element to be realised, namely the intention of the husband.

If the commands, including the divine ones, entail only a single obligation, how can one explain the universal character of religious obligations? After all, an obligation is only imposed through a command. Jaṣṣāṣ hints at the idea that would be seized upon by the subsequent jurists. That is the idea that an obligation repeats itself through the repetition of the

ratio legis. Thus the universality of religio-legal obligations comes from the universal nature of their *ratio legis* (*'illah*), i.e. a religious duty becomes constantly obligatory by the ever-recurring nature of its cause assigned by the Lawgiver. This idea is first expounded by Dabūsī and further developed by Sarakhsī and Pazdawī.

Coming to the text of Shāshī, we have, once again, an ample evidence for its lateness in this issue of *takrār*. Two ideas that we have encountered above, viz. a generic noun born out of the form of imperative and the cause of an obligation as the basis of its universality, have proved so useful for the explanation of the universality of the religio-legal obligations. The earlier jurists in fact advanced them for two different reasons; first, they felt the need for the idea of generic noun in order to reconcile a theoretical principle with the *corpus juris* of the school, i.e. to find a way for repetition without violating a theoretical principle. Second, they saw in the notion of the cause (*'illah*) a basis for the universality of the religio-legal obligations. These two ideas were not meant to be linked together until Shāshī or someone before him brought them together with a view to explaining the universality problem. According to him, although the form of imperative entails a single obligation, it is still likely to mean the whole genus of the action fallen under a command. So an obligation imposed by a form of imperative, though explicitly meant to be one, is likely to be more than that. And this potential can be activated by an external element, which in this case is the idea of cause. It is through the cause that we deduce the universality out of a command. In other words, Shāshī resolves the impasse that is present in the previous explanations, that is, how to link a command to the universality of religio-legal obligations.

Legal Acts and the Authoritativeness of Isolated Reports[31]

This is an issue discussed specifically by the Ḥanafī legal theorists and inspired by substantive law (*furū' al-fiqh*). In legal field, one finds isolated reports that do not fall within prophetic reports, such as testimonies given in courts and other reports with legal consequences. This fact raises the question of how to find a theoretical basis for all isolated reports that have legal consequences. For example, do the testimonies constitute the same certainty as isolated reports from the Prophet (peace be on him)? If not, what is the criterion to distinguish a testimony from an isolated report? This and similar questions will be discussed below.

[31] The topic of *khabar al-wāḥid* and legal acts is discussed in Jaṣṣāṣ, *al-Fuṣūl*, 3: 63–71; in Dabūsī, *Taqwīm*, ff. 98–100; in Sarakhsī, *Uṣūl*, 1: 364–70; in Pazdawī, *Uṣūl*, 3: 727–39; and in *Uṣūl al-Shāshī*, 280–81.

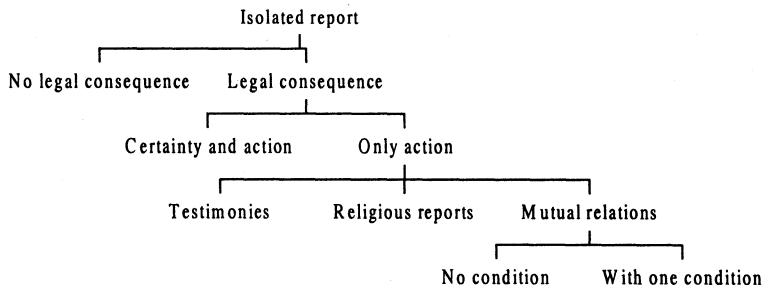
Our first jurist, Jaṣṣāṣ, deals with this issue not as an independent issue, but under the general heading of the epistemology of reports. After dividing reports into conclusive and inconclusive ones, he identifies, within the latter, three isolated reports that entail a legal consequence. These are:

(a) Testimonies (*al-shahādāt*). Within this category, three types are distinguished: (i) testimonies about penal cases (where the conditions are probity and a certain number of men [two or four], and any kind of doubt is effective in waiving the penalty); (ii) testimonies on non-penal cases (where the conditions are again probity and number; (this time two males or one male and two females); and (iii) testimonies about private affairs of women (where a single testimony is enough).

(b) Religious reports (*al-diyānāt*). In this category of religious reports, a single person is sufficient as long as he/she is an upright Muslim.

(c) Reports concerning mutual relations (*al-muʿāmalāt*). Under this category, mutual relations, Jaṣṣāṣ finds two distinct types: (i) In the first one, report of anybody, whether Muslim or non-Muslim, child or adult, honest or dishonest, is acceptable, as long as there is no doubt as to its truth. (ii) The second type requires one of the two requirements of testimony, i.e. probity or number, i.e. the acceptability of the report depends on two male reporters, or one male and two females, even if they do not meet the condition of probity. However, if there is one upright reporter, it is sufficient.

This leads to the following diagram:

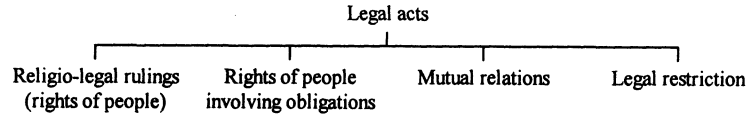


The second jurist, Dabūsī, treats the issue of legal acts under an independent heading: "explanation of the types of (acts) where *khabar al-wāḥid* is authoritative". His formulation uses a different and more abstract language than Jaṣṣāṣ in terms of accounting for all the legal acts. However, his account, indeed the rest of the three jurists' account, do not make any material change as far as the conditions of acceptability are concerned. I will, therefore, concentrate on later modifications and improvements introduced into the

presentation and organisation. Dabūsī formulates the above categories as follows:

(a) Religio-legal rulings (*al-aḥkām al-shar'iyyah*). These are the rulings which are open to abrogation and alteration (*al-naskh wa al-tabdīl*). More specifically, these are the branches of the religion (*furū' al-dīn*). The term *furū'* most likely refers to the realm of *fiqh*, but with an emphasis on its religious aspect, as Dabūsī further qualifies this category as falling in the sphere of "the rights of God (*ḥuqūq Allāh*)" imposed on people and places it in contrast with the following.
(b) The rights of people (*ḥuqūq al-'ibād*). These are the rights and obligations undertaken for the purpose of worldly interests (*al-maṣāliḥ al-'ājilah*), where all human beings are considered to be equal in reporting.
(c) The mutual relations (*al-mu'āmalāt*). These are the permitted transactions of the people, who are free, constituting rights and obligations.
(d) Restriction of one's legal capacity (*ḥajr*). This restriction is due to protect the right of the third parties.

Although Dabūsī deals with the same categories as Jaṣṣāṣ, his account radically differs. The difference is in both the terminology and the presentation. Dabūsī's account seems to be more abstract, as he talks not about testimonies but the rights of people that involve the imposition of obligation including testimonies. Similarly, Dabūsī's distinction between the rights of God and the rights of people is significant; he distinguishes between the first and the second categories, whereas Jaṣṣāṣ mentions the rights of people only in the second type of testimonies without explaining its significance. Finally, Dabūsī presents the last category as an independent one, while Jaṣṣāṣ considers it as a sub-category of mutual relations. Hence the following diagram:



Although using Jaṣṣāṣ's material in general, it was Dabūsī who set the agenda for subsequent discussions of this issue by isolating these legal acts. He advances the issue by improving the terminology, presentation, but more than that, by placing the categories of legal acts in a more theoretical grounding. Having said that, this theoretical outlook gradually decreases with the unfolding of Dabūsī's treatment, in that despite all the theoretical improvements, his account largely draws on that of Jaṣṣāṣ, especially in drawing the lines among the different categories.

Sarakhsī's terminology for the categories as well as their examination sometimes follows Dabūsī verbatim. According to him, too, legal acts are classified into four categories as far as their relation to *khabar al-wāḥid* is concerned:

(a) Religio-legal rulings (*al-aḥkām al-shar'iyyah*), which is further divided, on the consideration of doubt, into two sub-categories:

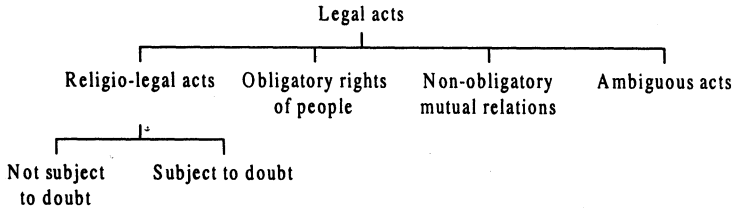
  i) Penal rules
  ii) Non-penal rules

(b) The claims of people (*ḥuqūq al-'ibād*), in which there is pure obligation (*ilzām maḥḍ*).

(c) Mutual relations (*al-mu'āmalāt*), or the relations of the market place, which involve no obligation (*luzūm*) at all.

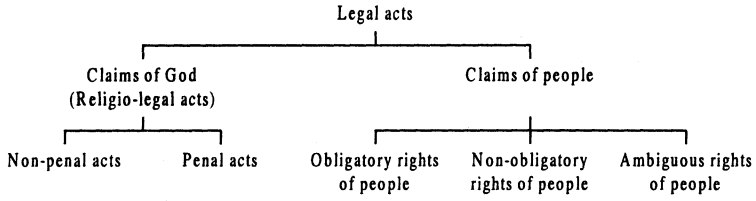
(d) Mutual relations, the relation of which to obligation is not clear, i.e. it includes obligation from one aspect but not from another (*min wajhin dūna wajhin*), hence leading to ambiguity in so far as obligation is concerned.

Thus, Sarakhsī more or less adopted the same categories and the language of Dabūsī with a slight difference: that of pushing the concept of obligation to the fore and finding an abstract name for the fourth category, namely "ambiguous acts", instead of using, like Dabūsī, one of the examples of this category as a name for it. The following diagram illustrates his categorisation of legal acts:



Pazdawī then started where Sarakhsī left and contributed to the organisational aspect of the issue by emphasising, along with the element of obligation also emphasised by Sarakhsī, the distinction between the claims of God and those of people. Indeed for him there is a two-tier classification. In the first broad classification, the dividing line is whether an act belongs to God's or people's claim. In the second one, it is the extent of connection with obligation that determines, such as in Sarakhsī, the sub-categories of the claims of people. The distinction between penal and non-penal rules is also drawn from Sarakhsī.

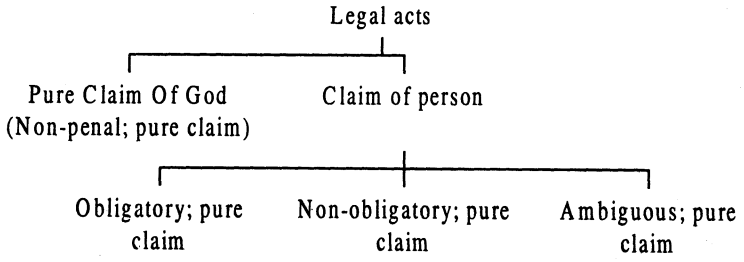
The organisation of legal acts, therefore, gradually evolved culminating in the advanced structure of Pazdawī, which is illustrated in the following diagram:



Shāshī's treatment is, as usual, brief and reflects the stage of the development found in the previous treatments, especially Pazdawī's. His aim is once again not to discuss a subject but to articulate the position of the school, which leads him to employ very straight and formal language. Thus he first identifies four legal acts where *khabar al-wāḥid*, one way or another, becomes authoritative. These are:

(a) Pure claim of God other than the punishment (*khāliṣ ḥaqq Allāh mā laysa bi-'uqūbah*).
(b) Pure claim of person in which there is obligation (*khāliṣ ḥaqq al-'abd mā fih ilzām maḥḍ*).
(c) Pure claim of person where no obligation is involved (*khāliṣ ḥaqqihī mā laysa fih ilzām*).
(d) Pure claim of person where there is only a partial obligation (*khāliṣ ḥaqqihī mā fih ilzām min wajh*).

Hence, the diagram is:



The striking similarity between Shāshī's text and that of Pazdawī is again obvious in these formulations. There are only two differences between them: one is the addition of the adjective *khāliṣ* (pure) to all categories and the other is omission of penal rules from the list. The latter is not because Shāshī is not aware of it, but quite contrary to that, his awareness of it led him to ignore it, as he qualified the first one with 'other than punishment'. The reason for his

omission lies in his aim in this book; he does not aim to discuss the issue of legal acts in terms of the authority of *khabar al-wāḥid*, which would include a comprehensive list of legal acts, irrespective of the authority of *khabar*. Instead, his aim is to summarise and articulate the position of the school, which includes only those acts that fall subject to the authority of *khabar*. One could argue that the two earlier jurists, Jaṣṣāṣ and Dabūsī, also listed four, not five, categories, a fact which casts doubt about the lateness of the text of Shāshī. However, since their works make no reference in the first category to the distinction between penal-nonpenal rulings, this objection seems not to be valid. Besides, identifying the first category with the claim of God, while the rest with the claim of fellow human beings was voiced for the first time, as stated above, by Pazdawī. The notion of obligation was again first emphasised by Sarakhsī as the cause of difference between the last three acts.

The Authoritativeness of *Ijmāʿ*[32]

The classical theory of Islamic law regards *ijmāʿ* along with the *Kitāb* and *al-khabar al-mutawātir* as the conclusive proofs of law. The question of how this conclusive authority is to be justified, therefore, constitutes an important concern of the *uṣūl* writers in their treatment of *ijmāʿ*.

According to Jaṣṣāṣ, the prime justification for the authority of *ijmāʿ* comes from the Qur'ān, whereas the Prophetic reports play a secondary but supportive role. The latter, by emphasising the infallibility of the community as well as adherence to the community, endorses the idea of a chosen nation, which is introduced by the Qur'ān. There is no room in Jaṣṣāṣ's justification of the authority of *ijmāʿ* for reason, for it is rationally plausible that a large group of people may agree on error, though it is less possible than the plausibility of error in the reasoning of an individual. Exclusion of reason is not out of hatred to reason but out of respect for it, as he accepts the role of reason in justifying the *mutawātir* report, for example. The case of *ijmāʿ* is, however, exceptional due to the fact that reason cannot be utilised for its justification. Another striking fact is that the treatment of justification of *ijmāʿ* by Jaṣṣāṣ stresses the communal aspect of *ijmāʿ*. For him, the authority of *ijmāʿ* is derived not only from the convergence of opinions but also from its substituting the authority of the Prophet (peace be on him).

The treatment of the justification of the authority of *ijmāʿ* by Dabūsī is very similar both in content and in structure to the treatment of Jaṣṣāṣ. The main ideas of the latter jurist are more or less identical with those of the

[32] The topic of the authoritativeness of *ijmāʿ* is discussed in Jaṣṣāṣ, *al-Fuṣūl*, 3: 257–267; in Dabūsī, *Taqwīm*, ff. 8–10; in Sarakhsī, *Uṣūl*, 1: 295–300; in Pazdawī, *Uṣūl*, 3: 971–82; and in *Uṣūl al-Shāshī*, 287–88.

former; divine favour, chosen nation, exclusion of reason from being a proof, the Qur'ānic passages, etc. However, there is a slight variation in Dabūsī's account of the *ḥadīth* evidence in establishing *ijmā'*, for he mainly ignores it, except for citing two Prophetic reports, and uncharacteristically, without discussion. Jaṣṣāṣ, on the other hand, though assigning a lesser role to the *sunnah* on *ijmā'*, relates most of the usually cited reports with providing a fair discussion of the issues surrounding their interpretation.

The exclusion of reason from having a say in *ijmā'* is vigorously upheld by Jaṣṣāṣ and Dabūsī. There remained only the *Kitāb* and the *sunnah* that would help to justify *ijmā'*. To Jaṣṣāṣ, Qur'ānic passages constituted the primary proof while the *sunnah* bolstered the idea present in these passages. By focusing on one passage (Qur'ān 2: 143), Jaṣṣāṣ first draws attention to the point, which stresses the special relationship between God and His chosen community, then further substantiates this relationship with the idea of the community taking the place of the Prophet (peace be on him) in religious matters. The *sunnah* further advances this status of the *ummah* by introducing the notion of infallibility of the community as a whole. Those Qur'ānic passages and the Prophetic reports which enjoin the believers to follow the path of the community are apparently regarded as of secondary importance when compared with the idea of special status of *ummah*. In other words, this idea constitutes the rationale on which the authority of *ijmā'* is based. Dabūsī adopted this stance with a slight difference, that is, he further reduced the role of the *sunnah* furthermore. Both these jurists tried to keep the question of the justification of *ijmā'* within the confines of the Islamic dogma, thereby denying reason a role in this matter.

Sarakhsī and Pazdawī continued to cite the Qur'ānic passages and the Prophetic reports, but they went further than that and extracted the idea which had been ever present since Jaṣṣāṣ, i.e. the consensus of *ummah* takes its authority from the finality of the message of Islam. They formulated a rational argument based on this idea. According to this, the finality of Islam necessitates that the Muslim path be secure; otherwise there would be no guarantee for the Truth of Islam. In other words, Sarakhsī and Pazdawī reformulated the general idea that the Qur'ān, being the last of the divine Books, was protected by divine grace through the infallibility of the Muslim community. Sarakhsī first formulated this so-called rational argument under a separate heading, though he was reluctant to call it rational. Only Pazdawī dares to call it reasoning. The rationale behind the attitude of exclusion of reason is to avoid the claims of adherents of other religions for the same effect. However, both Sarakhsī and Pazdawī clearly stated that a pure rational

justification was not sufficient for *ijmāʿ*; what really makes it authoritative is divine grace.

The treatment of *ijmāʿ*, in *Uṣūl al-Shāshī*, is so brief that the issue of the justification of the authority of *ijmāʿ* consists only in one sentence. Many standard issues discussed under *ijmāʿ* are ignored here. For example, Shāshī seems to be disinterested in such central questions as the basis of and eligibility to *ijmāʿ*. Rather, he concentrates on the interesting details of the application of the theory of *ijmāʿ*, which one would only find in a well-developed, post formative *furūʿ* work. He seems to be very confident of the weight of the idea of *ijmāʿ* and, therefore, takes for granted many things which are regarded as crucial to the explication of the concept of *ijmāʿ* in the formative period. His introducing the idea of *ijmāʿ*, which also includes the sentence of the justification, constitutes a good example of this mature juristic language:

> The consensus of this *ummah*, in the practical field of religion, after the Messenger of God (peace be on him) passed away, is an authority that makes actions obligatory on the basis of revelation as a grace upon this nation (*Ijmāʿ hādhihī 'l-ummah baʿda mā tuwuffiya rasūl Allāh ṣallā Allāh ʿalayh wa sallam fi furūʿ al-dīn ḥujjah mūjibah li 'l-ʿamal bihā sharʿan, karāmatan li hādhihī 'l-ummah*).[33]

This single sentence actually contains many points already discussed. First of all, Shāshī clearly states that *ijmāʿ* takes its authority from the revelation (*sharʿ*), thereby making it clear, at the beginning, that *ijmāʿ* cannot be justified by pure rational means. As a corollary to this, he then brings the notion of divine grace in order to refer to the rationale behind the justification of *ijmāʿ*.

The notion of divine grace, as we have seen above, especially in Pazdawī, constitutes the point of intersection between "rational" and traditional proofs and is taken as the most persuasive argument as far as the justification of the concept of *ijmāʿ* is concerned. This sentence, however, does not make it clear whether *ijmāʿ* yields certain knowledge. The phrase "*ḥujjah mūjibah li 'l-ʿamal*, authority that entails a practical obligation" apparently suggests that *ijmāʿ* yields an inconclusive knowledge. However, a scheme of epistemologically graded four types of *ijmāʿ* indicates that Shāshī, in this matter, in fact, adopts a similar formulation to his predecessors. The idea of comparing these different types of *ijmāʿ* with different types of revelatory proof, namely *Kitāb* and *sunnah*, certainly belongs to the post-Sarakhsī period.

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[33] *Uṣūl al-Shāshī*, 287–88

Istiḥsān[34]

It is known that Shāfi'ī restricted the theory of *ijtihād* to *qiyās* and rejected *istiḥsān*. The Ḥanafī *uṣūl* writers were not always happy with this concept, since their opponents often accused them of introducing a fifth source into the *Sharī'ah*. The dominant Ḥanafī *uṣūl* works from Jaṣṣāṣ to Pazdawī, nevertheless, preserved the concept of *istiḥsān* but interpreted it as a kind of *qiyās* rather than as an independent form of reasoning. It is interesting that the topic of *istiḥsān* is completely ignored by the so-called *Uṣūl al-Shāshī*, a fact which again calls into question its authenticity as a fourth century text. The concept of *istiḥsān* received the largest attention in the earliest works in the field of *uṣūl*, starting as a separate and independent topic until it was assimilated into the topic of *qiyās* at the end of the fifth century of *Hijrah*. More interestingly, the so-called Māturīdī *uṣūl* movement, formerly known as the school of Samarqand, seems to have ignored the topic of *istiḥsān* completely too.[35] Instead of explaining away by using certain hermeneutical devices, two famous Māturīdī *uṣūl* texts completely ignored it. They were probably not satisfied with the explanation the Jaṣṣāṣ-Pazdawī tradition had already provided. It is interesting to note that earliest representatives of this *uṣūl* movement only touched on the concept of *istiḥsān* in the context of the notion of *takhṣīṣ al-'illah*, where they denounce this latter idea. The *Uṣūl al-Shāshī* also denounces this concept, which, as seen in Jaṣṣāṣ and Dabūsī, was an earlier position of the Ḥanafī school, but which was later abandoned, as seen in Sarakhsī, Pazdawī and indeed in almost all later *uṣūl* writers.[36] It is my contention, therefore, that on the basis of excluding *istiḥsān* from the *uṣūl* themes one can place this *Uṣūl al-Shāshī* in a period when the Māturīdī tradition became the Ḥanafī ideology after the sixth century of *Hijrah*, for, it displays the characteristics of both movements, namely the Māturīdī tradition and the juristic tradition of Jaṣṣāṣ-Pazdawī line.[37]

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[34] The topic of *istiḥsān* is discussed in Jaṣṣāṣ, *al-Fuṣūl*, 4: 221–253; in Dabūsī, *Taqwīm*, ff. 227; in Sarakhsī, *Uṣūl*, 2: 199–208; in Pazdawī, *Uṣūl*, 4: 1122–1134.

[35] The earliest representative of this movement whose work reached us, one of Pazdawī brothers, Abū al-Yusr al-Pazdawī (d. 493/1100), and 'Alā' al-Dīn al-Samarqandī (d. 539/1145), whose *uṣūl* work is the richest source for this movement, pays only cursory attention to the concept of *istiḥsān*. See, Muḥammad b. Muḥammad Abū 'l-Yusr al-Pazdawī (al-Bazdawī), *Kitāb fihi Ma'rifat al-Ḥujaj al-Shar'iyyah* (Introduction, édition critique et index par M. Bernand & E. Chaumont, IFAO, Le Caire, forthcoming), art. 71; al-Samarqandī, *Mīzān al-Uṣūl*, 630–635.

[36] See for example, Jaṣṣāṣ, *al-Fuṣūl*, 6: 255; Dabūsī, *Taqwīm*, ff. 174b–175b; Sarakhsī, *Uṣūl*, 2: 208–213; Pazdawī, *Uṣūl*, 4: 1152–1163.

[37] This is further supported by the topic of command above.

Conclusion

A comparative analysis of these five texts enables us to draw a few conclusions concerning the text of *Uṣūl al-Shāshī*. First of all, its brevity as well as conciseness makes it closer to a style of writing which, in our view, started with Pazdawī. Unlike, for example, the texts of Jaṣṣāṣ and Sarakhsī, this style presupposes a mature development already elaborated in the tradition in a way that satisfied the immediate needs of the school. The new age required a very different approach to the subject matter of *uṣūl al-fiqh*, namely, presenting this tradition in manuals, compendia and even perhaps textbooks, whose prominent feature is total control of the material from beginning to the end, resulting in conciseness and organisation. They no longer represent the "views" and discussions of a certain jurist on *uṣūl* questions, but articulations of the school position. Emergence of *madrasah*s (traditional Islamic centres for learning) seems to coincide with this change in writing style. Pazdawī's text marks the beginning of this style in Ḥanafī *uṣūl* tradition, which explains its being the most popular compendium in this school throughout Medieval times.

Uṣūl al-Shāshī in this development most probably belongs to the post-Pazdawī period. Apart from lacking a historical basis for its being a fourth century work, this study has indicated that structure as well as terminology of this work in fact displays the features of the above mature style, sometimes even surpassing it in terms of brevity. It must have been intended as an introductory work aiming to describe the school positions on *uṣūl al-fiqh*. The following table illustrates the main points raised regarding the authenticity of *Uṣūl al-Shāshī*:

A *M* *R*	A mature approach to the definition: linguistic and legal definitions. Consideration of theological implications. In the second issue, ignoring the parties to a dispute or their views on the consequence of command. Being satisfied with the statement of accepted opinion. Using the terms of *muṭlaq* and *mūjab* which are only found in Sarakhsī and Pazdawī. On the *takrār* issue, the theory of *sabab* built upon the one developed by Sarakhsī and Pazdawī.
K *H* *A* *B* *A* *R*	Types of legal acts in relation to *khabar al-wāḥid* are exactly the same as those identified by Pazdawī. Conditions of acceptability of *khabar al-wāḥid* and interpretation of the examples resemble to the post- Dabūsī literature?

IJMĀʿ	Shāshī, in a single introductory sentence on *ijmāʿ*, articulates his school's position in a way which clearly presupposes an already established tradition. More specifically, he uses an epistemological hierarchy between different types of *ijmāʿ* used by Sarakhsī and especially by Pazdawī, but not by Dabūsī or Jaṣṣāṣ.
ISTIḤSĀN	As a result of the efforts of his predecessors in assimilating *istiḥsān* into *qiyās* by reducing it either to a form of *taʿāruḍ* (conflict between two proofs) and *tarjīḥ* (preferring one proof over another) or to a form of *qiyās*, Shāshī totally ignores this issue in this introductory work. Related to *istiḥsān*, *takhṣīṣ al-ʿillah* is rejected on theological grounds. Again this is a feature of post-Sarakhsī period.